

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PETER DELVECCHIA, individually  
and as next friend of A.D., a Minor,

**Plaintiffs,**

v.  
FRONTIER AIRLINES, INC., et al..

### Defendants.

Case No.: 2:19-cv-01322-KJD-DJA

**Defendants' Response to Plaintiffs' Motion to File Exhibits to Response to Defendants' Motion for Summary Judgment Under Seal (ECF No. 280)**

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO FILE  
EXHIBITS TO RESPONSE TO DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT UNDER SEAL**

Defendants FRONTIER AIRLINES, INC., SCOTT WARREN, and REX SHUPE (collectively “Defendants”), by their undersigned counsel, submit this Response to Plaintiffs’ Motion to File Exhibits to Response to Defendants’ Motion for Summary Judgment Under Seal (ECF No. 280).

Date: December 15, 2023

Respectfully submitted,

## **FRONTIER AIRLINES, INC.**

*/s/ Richard C. Harris*

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## **INTRODUCTION**

On November 30, 2023, Plaintiffs filed a Motion to File Exhibits to Response to Defendants' Motion for Summary Judgment Under Seal. ECF No. 280. Plaintiffs seek to seal 13 Exhibits (#1-2, #10, #15-16, and #22-29). Two of these Exhibits include Frontier's confidential and proprietary information: Exhibit No. 1 (Defendants' Passenger Name Records); and Exhibit No. 6 (Deposition transcript and Expert Report of Dr. Matthew Hughey).

## **ARGUMENT**

Fed. R. Civ. P. 26(c) states that a court may, for “good cause,” issue orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c). The Rule gives district courts flexibility in balancing and protecting the interests of the parties. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).

Pursuant to *Kamakana*, there is a presumption of public access to judicial records attached to *dispositive* motions. There is a lesser need for public access to records attached to non-dispositive motions that are only tangentially related to the underlying cause of action. In accordance with these tenets, sealing records attached to non-dispositive motions requires meeting a lower threshold showing of “good cause,” while sealing records attached to dispositive motions requires an elevated showing that “compelling reasons” support maintaining privacy. “Compelling reasons” are generally shown if the disputed records might become a vehicle for improper purposes, such as gratifying private spite, promoting public scandal, circulating libelous statements, or releasing trade secrets. *Id.* at 1179-80. Given the history of this litigation, in which Plaintiffs have accused Frontier and its crewmembers of condoning widespread and rampant acts of racial discrimination against its own passengers, including A.D., a minor, “compelling reasons” exist to maintain the privacy of Frontier’s records due to the risk that they might become a vehicle for improper purposes, such as gratifying private spite, promoting public scandal, circulating libelous statements, or releasing trade secrets.

1           **I. EXHIBIT NO. 1 – PASSENGER NAME RECORDS**

2           Exhibit 1 consists of Frontier’s Passenger Name Records (PNR) for Plaintiffs. Frontier has  
3 designated these documents as “Confidential” under the terms of the Court’s Protective Order.  
4 Plaintiffs note that Frontier “has the obligation to support” this designation. ECF No. 280, p. 4.  
5 However, Plaintiffs further state that “the minor Plaintiff’s name has been left unredacted because  
6 the full context, including his full name, is relevant to Plaintiffs’ claim for defamation *per se*,” and  
7 the names of minors are information that has “traditionally been kept secret for important policy  
8 reasons.” *See Fed.R.Civ.P. 5.2(a); ECF No. 280, p. 4.* In addition to disclosing the identity of the  
9 minor Plaintiff, the PNR documents contain sensitive proprietary information, including  
10 commercial and financial information. This includes certain details of Frontier’s internal  
11 investigation into of the incident and summaries of exchanges between Frontier personnel and  
12 Plaintiff Peter DelVecchia, as well as certain financial information relating to Plaintiffs’ airfare. For  
13 these reasons, Frontier respectfully requests that Exhibit 1 remains filed under seal.  
14

15           **II. EXHIBIT NO. 6 – REPORT AND TESTIMONY OF DR. HUGHEY**

16           Exhibit 6 consists of Dr. Hughey’s expert report, deposition transcript, and related exhibits.  
17 These materials are high sensitive. Much of Dr. Hughey’s report (*see* pages 10-25) is dedicated to  
18 discussing the specific details of the passenger discrimination complaints and human trafficking  
19 incident reports that Frontier was ordered to produce. The Court has already concluded that  
20 “compelling reasons” exist to maintain these records under seal. ECF No. 150, pp. 8-9. Dr.  
21 Hughey’s report also attaches certain training records (*see* pages 51-53) maintained as confidential  
22 by Frontier due to the proprietary information reflected therein. Because much of Dr. Hughey’s  
23 deposition involved questions and answers pertaining to the passenger discrimination complaints  
24 and human trafficking incident reports that Frontier was ordered to produce, as well as Frontier’s  
25 proprietary information reflected in its training materials and records, compelling reasons exist to  
26 maintain Plaintiffs’ Exhibit No. 6 under seal.  
27  
28

## **CONCLUSION**

For the foregoing reasons, Defendants respectfully assert that compelling reasons exist to seal Exhibit Nos. 1 and 6 to Defendants' Response to Plaintiffs' Motion to File Exhibits to Response to Defendants' Motion for Summary Judgment Under Seal (ECF No. 280).

Date: December 15, 2023

Respectfully submitted,

## **FRONTIER AIRLINES, INC.**

/s/ Richard C. Harris  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2023, I caused the foregoing to be electronically filed with the United States District Court for the District of Nevada using the CM/ECF system.

By: /s/ Richard C. Harris